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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. TRINO EREDIA, Defendant and Appellant.	B223337 (Los Angeles County Super. Ct. No. A 781020)

APPEAL from an order of the Superior Court of Los Angeles County, Peter P. Espinoza, Judge. Affirmed.

Immigrant Crime and Justice and Karl W. Krooth for Defendant and Appellant.

Edmund G. Brown, Jr., Kamala D. Harris, Attorneys General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Chung L. Mar and Erika D. Jackson, Deputy Attorneys General, for Plaintiff and Respondent.

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Trino Eredia appeals from an order denying his petition for a writ of error *coram nobis*. We affirm.

PROCEDURAL HISTORY

In March 1986, in case No. A781020 (hereafter case 020) appellant was charged with one count of possession of heroin for sale and another count of possession of cocaine.

On April 10, 1986, appellant entered a plea of guilty to the first charge. The terms of the plea bargain were that appellant would be placed on felony probation and serve one year in county jail as a condition. In reciting the terms of the bargain, defense counsel stated that all believed that appellant had no prior criminal record but "[i]f he does have a record that we are not aware of . . . , he would receive the low term." Appellant personally indicated that he had discussed the plea and its consequences with his lawyer, that he understood its terms, that his true name was Eredia Trino,[1] and that, if he was not a citizen, he would be deported, denied citizenship and denied reentry into the United States. Defense counsel concurred in the plea and stipulated to the factual basis of the plea. The trial court found appellant's plea and waivers to have been made knowingly, intelligently, freely and voluntarily.

On May 5, 1986, appellant appeared for sentencing in case 020. The court noted that there was an "add-on" case, No. A768143 (hereafter case 143), wherein appellant was charged under the name Jose Antonio Robles. The court referred to case 143 as the "diversion file," and inquired what appellant proposed to do "about the case where he [appellant] was on diversion," i.e., case 143. Counsel replied that appellant was ready to plead guilty in case 143.

The court stated that it would sentence appellant to the low term of two years in case 143, suspend that sentence and place appellant on probation in that case.

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[1] As discussed below, appellant was charged in another case under the name Jose Antonio Robles.

Appellant indicated that this was acceptable to him. The court then warned appellant that pleading guilty in case 143 could prevent him from becoming a citizen, that he could be deported and the he could be denied reentry into the United States. Appellant stated that he understood. He then pleaded guilty in case 143 to possession of heroin.

The court dismissed the second count in case 020, imposed and suspended the low term of two years in state prison, placed appellant on probation for three years and ordered him to serve 180 days in county jail on count one of case 020. The court imposed an identical sentence in case 143 and ordered it run concurrently with the sentence in case 020.

The petition for a writ of error *coram nobis* was filed on November 12, 2009.

DISCUSSION

Appellant's petition challenges the validity of the judgments of conviction entered on May 5, 1986. He does so for a variety of reasons, which we detail in the separate parts below. The fatal flaw in the petition, however, is that, even assuming that appellant's reasons for challenging his convictions are sound, appellant simply fails to explain why he waited 23 years to bring these alleged flaws to a court's attention.

1. The Trial Court Knew That Case 143 Had Been Handled as a Diversion

Appellant claims that on May 5, 1986, the trial court was unaware of the fact that case 143 had been handled as a diversion.

This is incorrect. The record is quite clear that the court knew on May 5, 1986, that case 143 was a diversion. At the outset of this hearing, the court asked "What do you propose to do about the case where he was on diversion?" The court went on to explain to appellant how case 143 would be handled. Only after all the appropriate warnings were given did the court accept appellant's plea of guilty in case 143. It is therefore absolutely clear that the trial court was fully informed of the status of case 143 on May 5, 1986.

It is true, of course, that on May 5, 1986, case 143 *became* a felony conviction. But this made no difference, as we explain in the next part.

2. The Sentence on Case 020 Conformed to the Plea Bargain

Although counsel has chosen to frame appellant's contentions in a somewhat complex way,[2] the gist of the matter appears to be that the terms of the plea bargain did not include the suspended two-year prison term that was imposed on May 5, 1986.

Appellant is again wrong on the facts. Defense counsel explicitly stated on April 10, 1986, that if appellant had a prior criminal record, he would receive a low term. That is exactly what happened, with the exception that the low term of two years was suspended.

3. Appellant Was Not Eligible in May 1986 for Relief Under Penal Code Section 1203.4

Appellant contends that he was deprived of relief under Penal Code section 1203.4, which empowers a court to give a defendant leave to withdraw a plea of guilty or to set aside a verdict of guilty. Relief under Penal Code section 1203.4 is afforded to a defendant who has fulfilled the conditions of probation for the entire period of probation or who has been discharged prior to the termination of probation. The petition before us challenges the proceedings of May 5, 1986. It is evident that appellant was not eligible for relief under section 1203.4 on May 5, 1986, since that is the day that he was initially placed on probation.

4. Appellant Has Failed to Show Due Diligence

"It is well settled that a showing of diligence is prerequisite to the availability of relief by motion for *coram nobis.*" (*People v. Shorts* (1948) 32 Cal.2d 502, 512.) "The diligence requirement [in *coram nobis*] is not some abstract technical obstacle placed randomly before litigants seeking relief, but instead reflects the balance

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[2] Appellant has been represented by his current counsel throughout these *coram nobis* proceedings.

between the state's interest in the finality of decided cases and its interest in providing a reasonable avenue of relief for those whose rights have allegedly been violated." (*People v. Kim* (2009) 45 Cal.4th 1078, 1097.)

Counsel has seen fit to file a petition in excess of 20 pages, not counting the exhibits, and he has filed an opening brief of 20 pages and a reply brief of 5 pages. There is a glancing reference here and there to the requirement of due diligence, but there is not a single cogent attempt to show that appellant has been diligent. Given that over 23 years elapsed between the 1986 conviction and the petition, this defect is fatal to the petition.

Appellant's detailed declaration under penalty of perjury submitted in support of the petition explains the entire case, including the reason why counsel has been unable to show that appellant was diligent. In sum, appellant is in this country illegally but has lived here with some short interruptions since 1970. He and his wife, both gainfully employed, have two sons who were born in the United States and have grown up here. Appellant and his wife applied for permanent stay in the United States in 2005; appellant's application was denied and his wife's was granted. Appellant now faces deportation.

Appellant's declaration is the best evidence of a lack of due diligence. While he states that he thought that case 143, originally a diversion, had been terminated when the diversion was terminated, he fails to state that he only learned of this alleged mistake recently. In other words, even taking his claim at face value, he knew of this all along and did nothing about it. But we are not inclined to accept this claim at face value because it flatly contradicts the record of the proceedings of May 5, 1986. Appellant obviously knew that he was pleading guilty to the charge in case 143, a matter that the trial court explained to him clearly and carefully.

This petition is a desperate attempt to stave off deportation. While no one is blind to the human tragedy that is unfolding here, we cannot undo criminal convictions that are in every respect lawful and valid.

Because the lack of due diligence is so clear, and the delay is so substantial, it is not necessary for us to address the remainder of appellant's contentions.

DISPOSITION

The judgment (order) is affirmed.

FLIER, J.

We concur:

RUBIN, Acting P. J.

GRIMES, J.